

STATE PUBLIC DEFENDER [493]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 13B.4(8), the State Public Defender amends Chapter 7, “Definitions” and Chapter 12, “Claims for Indigent Defense Services” and Chapter 14, “Claims for Attorney Fees in 600A Terminations,” Iowa Administrative Code.

These proposed amendments implement 2006 Iowa Acts, House File 2672 which revises the hourly rate paid for indigent defense cases and Senate File 2304, which modifies eligibility for court appointed counsel in chapter 600A termination cases.

Pursuant to Iowa Code section 17A.4(2), the State Public Defender finds that notice and public participation are impractical. These amendments are required because the statutory changes noted above are effective July 1, 2006

The State Public Defender also finds, pursuant to Iowa Code section 17A.5(2)(b)(2), that these amendments should be effective July 1, 2006 because the amendments confer a benefit on the public.

These amendments are also published herein under Notice of Intended Action as ARC _____ to allow for public comment.

These amendments are intended to implement Iowa Code chapters 13B, 600A, and 815 as amended by 2006 Iowa Acts, House File 2672 and Senate File 2304.

The following amendments are adopted, effective July 1, 2006.

Item 1. Amend rule ~~493—7.1(13B,815)~~ as follows:

Amend the following definition:

“Claimant” means an appointed attorney, ~~a county,~~ or other person ~~authorized by Iowa law~~
~~and the rules of criminal procedure to make application to the state for seeking~~
reimbursement of ~~attorney costs or fees depositions, and other expenses incurred from the~~
~~representation of an indigent person~~ payable from the indigent defense fund.

Item 2. Amend rule ~~493—12.4(13B,815)~~ as follows:

~~493—12.4(13B,815) Rate of compensation.~~ Unless the attorney has a contract that provides
for a different manner or rate of payment, the following hourly rates shall apply to payment
of all claims for cases to which the attorney was appointed after June 30, 1999 and before
July 1, 2006:

Attorney time	Class A felonies	\$60/hour
	Class B felonies	\$55/hour
	All other cases;	
	including all appeals	\$50/hour
Paralegal time		\$25/hour

Unless the attorney has a contract that provides for a different manner or rate of payment, the
following hourly rates shall apply to payment of all claims for cases to which the attorney
was appointed after June 30, 2006:

<u>Attorney time</u>	<u>Class A felonies</u>	<u>\$65/hour</u>
	<u>All other criminal cases</u>	<u>\$60/hour</u>
	<u>All other cases</u>	<u>\$55/hour</u>
<u>Paralegal time</u>		<u>\$25/hour</u>

12.4(1) *Applicability to juvenile cases.* In a juvenile case to which the attorney was appointed before July 1, 1999, the state public defender will pay the attorney ~~at the above referenced rate~~ \$50 per hour for all services performed following the dispositional hearing or the first regularly scheduled review hearing occurring after June 30, 1999. In a juvenile case to which the attorney was appointed after June 30, 1999 but before July 1, 2006, the state public defender will pay the attorney \$55 per hour for all services performed following the dispositional hearing or the first regularly scheduled review hearing occurring after June 30, 2006. However, the attorney must file separate claims for services before and after said hearing. If a claim is submitted with two hourly rates on it, the claim will be paid at the lower applicable rate.

12.4(2) *Appointments before July 1, 1999.* In a case to which the attorney was appointed before July 1, 1999, attorney time shall be paid at a rate that is \$5 per hour less than the ~~above~~ rates established pursuant to 2000 Iowa Acts, chapter 1115, section 10. Claims for compensation in excess of these rates are not payable under the attorney's appointment and will be reduced.

12.4(3) *Applicability to appellate contracts.* This rule shall not apply to claims from attorneys with appellate contracts with the state public defender.

12.4(4) ~~Probation/parole violations~~ All other cases. As used in this rule the term "all other cases" includes appeals, juvenile cases, contempt actions, representation of material witnesses, and probation/parole violation cases, post conviction relief cases, restitution, extradition, and sentence reconsideration proceedings ~~The hourly rate for time spent on probation or parole violation proceedings shall be \$50 per hour~~ without regard to the level of the underlying charge.

Item 3. Amend subrule **493—12.5(1)(13B,815]** as follows:

12.5(1) *Frivolous appeals.* In an appeal to which the attorney was appointed after June 30, 1999 and before July 1, 2006 in which the attorney withdraws, based on a determination that the appeal is frivolous or in which the appeal is dismissed prior to the filing of the attorney's proof brief, the attorney shall be paid at the rate of \$50 per hour, with a maximum fee of \$1,000 in each case. In an appeal to which the attorney was appointed after June 30, 2006 in which the attorney withdraws, based on a determination that the appeal is frivolous or in which the appeal is dismissed prior to the filing of the attorney's proof brief, the attorney shall be paid at the rate of \$55 per hour, with a maximum fee of \$1,100 in each case

Item 4. Amend subrule **493—12.5(2)(13B,815)** as follows:

12.5(2) *Juvenile cases/joinder.* In a juvenile appellate case to which the attorney was appointed after June 30, 1999 and before July 1, 2006 involving more than one appellant or appellee, where an attorney joins in all or part of the brief of another party, the attorney shall be paid at the rate of \$50 per hour, with a maximum fee of \$500 in the case. In a juvenile appellate case to which the attorney was appointed after June 30, 2006 involving more than one appellant or appellee, where an attorney joins in all or part of the brief of another party, the attorney shall be paid at the rate of \$55 per hour, with a maximum fee of \$550 in the case.

Item 5. Amend subrule **493—12.6(3)(13B,815)**, paragraph a as follows:

a. In an appeal to which the attorney was appointed after June 30, 1999 and before July 1, 2006 in which the attorney withdraws based on a determination that the appeal is frivolous or in which the appeal is dismissed prior to the filing of the attorney's proof brief, the attorney shall be paid at the rate of \$50 per hour, with a fee limitation of \$1,000. In an appeal to which the attorney was appointed after June 30, 2006 in which the attorney withdraws based

on a determination that the appeal is frivolous or in which the appeal is dismissed prior to the filing of the attorney's proof brief, the attorney shall be paid at the rate of \$55 per hour, with a fee limitation of \$1,100.

Item 6. Amend subrule **493—12.6(3)(13B,815)**, paragraph b, as follows:

b. In an appellate case to which the attorney was appointed after June 30, 1999 and before July 1, 2006 in which an appointed attorney joins in all or part of the brief of another party, the attorney shall be paid at the rate of \$50 per hour, with a fee limitation of \$500. In an appellate case to which the attorney was appointed after June 30, 2006 in which an appointed attorney joins in all or part of the brief of another party, the attorney shall be paid at the rate of \$55 per hour, with a fee limitation of \$550.

Item 7. Amend rule **493—14.3(13B,815)** as follows:

493—14.3(13B,600A,815) Hourly rate and fee limitations. Unless the attorney has a contract with the state public defender that provides for a different rate or manner of payment, claims for attorney fees in a termination of parental rights case under Iowa Code chapter 600A to which the attorney was appointed after March 11, 2004 and before July 1, 2006 shall be paid at the rate of \$50 per hour, with a fee limitation of \$500; claims for attorney fees in a termination of parental rights case under Iowa Code chapter 600A to which the attorney was appointed after June 30, 2006 shall be paid at the rate of \$55 per hour, with a fee limitation of \$550. Claims shall not be approved for an amount in excess of this fee limitation.

Item 8. Amend subrule **493—14.5(1)(13B,815)**, **paragraph b** as follows:

b. Both the petitioner, or the person on whose behalf the petition is filed, and the respondent are indigent, unless the petitioner is a private child-placing agency as defined in section 238.2 in which case the petitioner need not be indigent;

May 23, 2006

Thomas G. Becker
State Public Defender